



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

**PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT**

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

October 14, 2015

Mr. Larry D. Wilkens  
P.O Box A  
New Castle, IN 47362

*Re: Formal Complaint 15-FC-243; Alleged Violation of the Access to Public Records Act by the Marion County Prosecutor's Office*

Dear Mr. Wilkens,

This advisory opinion is in response to your formal complaint alleging the Marion County Prosecutor's Office ("Office"); violated the Access to Public Records Act ("APRA") Ind. Code § 5-14-3-1 *et. seq.* On July 24, 2015 the Office responded via Ms. Charnette Garner, Esq., Chief Counsel. Her response is attached for your review. I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 27, 2015.

## BACKGROUND

On August 27, 2015, you sent a request to the Prosecuting Attorney requesting a copy of their files. You were not given a response, and are alleging that the Prosecuting Attorney violated the APRA by neglecting to respond within seven (7) days.

On September 10, 2015, the Marion County Prosecutor's Office responded to your complaint. The response states that the Office did not receive your request, because you addressed it 251 E. Ohio Street, Suite 16. The Prosecutor's Office is housed in Suite 160.

## ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The Marion County Prosecutor's Office is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Office's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

It stands to reason that a public agency does not have an obligation to respond to a request it does not receive. However, now that the prosecutor's office is on notice of your request, it is my sincere hope that it responds to the merits of your request with the production of records or an appropriate denial.

### **CONCLUSION**

Based on the foregoing, it is the Opinion of the Public Access Counselor the Marion County Prosecutor's Office did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a stylized, sweeping flourish extending from the bottom left.

Luke H. Britt  
Public Access Counselor

Cc: Ms. Charnette Garner, Esq.